IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1079 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JADEJA PRABHATSINH BANUBHA

Versus

STATE OF GUJARAT

Appearance:

MR ANSHIN H DESAI for Petitioners

MR SAMIR J DAVE, APP, for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/12/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioners. Technicality should not prevail over substantial justice. The learned counsel for the petitioner contended that the learned Sessions Court has rejected the revision

application filed by the petitioner against the order of the trial court adding charge under section 304(B) of I.P.C. only on the ground that this court in earlier special criminal application of the respondent No.2 gave direction to frame charge, which is not correct. He made reference to the document, annexure `F' at page No.45 of this criminal application for revision. This Court dismissed the criminal application for revision NO.448/93 by passing the following order:

"No ground is made out for interference. Hence, rejected."

2. So either way, this Court has not made any observation. Copy of the revision application filed by Shri Vaghela Gambhirsinh Kalubha i.e. criminal revision application NO.448/93 is also on the record. From the revision application, I find that the petitioner therein prayed for direction to the Court of Judicial Magistrate First Class, Dhrol to add the charge against the petitioners in the criminal case No.314/91 under section 304(B) of I.P.C.. The order of this Court cannot be read as if the Court has once for all finally closed the matter. From reading of these two documents, it appears that this Court had not have interfered in the matter at that stage for the reason that for this prayer, the petitioner-complainant therein may have right to approach to the trial curt. Accordingly, an application has been filed and learned trial court was satisfied that the charge under section 304(B) of I.P.C. is to be added and accordingly it has been added, which order has also not been interfered with by the revisional court. Second revision has not been provided by the legislature and reason is very obvious that it wanted to give finality to the orders passed by the revisional court. This Court sitting under Article 227 of the Constitution has no prerogative to interfere with all the orders passed by the Court below. Only in case where the Court considers that grave injustice would be caused to the petitioner in case the order of the Court below is not set aside then there may be some justification in interference but not as a rule in all the matters. In this case, otherwise also, I am satisfied that by this order, no prejudice is caused at this stage to the petitioners. The charges have already been framed though earlier without adding section 304(B) of I.P.C. and they are facing trial and are on bail and in case what the learned counsel for the petitioners contends that no case is there against the petitioners under section 304(B) of I.P.C. the learned trial court shall consider the matter and ultimately it may acquit them. At this stage, this Court will not

permit the petitioners to stall the trail of the case by challenging this order of trial court.

3. In the result, the special criminal application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. The petitioners are directed to pay costs of this special criminal application to the State of Gujarat.

****

zgs/-